118 U. S. 130.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1123.

THE BOARD OF LIQUIDATION OF THE CITY DEBT OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES EX REL: JUDAH HART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 17, 1885.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Petition for mandamus	1	1
Order on petition	6	4
Consent waiving jury, &c.	6	4
Answer	8	4
Intervention	12	7
Order to file intervention	14	8
Answer to intervention by Judah Hart	15	8
Board of Liquidation	16	9
Defendant's and intervenor's bill of exception No. 1	17	9
No. 2	18	10
No. 3	19	10
Intervenor's bill of exception No. 4	20	11
Findings of fact and judgment	21	11
Defendant's application for writ of error	32	17
Bond for writ of error	33	18
Certificate to transcript	36	19
Writ of error	37	20

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1 *Petition for Mandamus. Filed July 30th*, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT *et als.* } No. 11090.

To the honorable the judges of the United States circuit — in and for the fifth circuit and eastern district of Louisiana.

The petition of the United States upon the relation of Judah Hart, a citizen of the State of New York, with respect, showeth:

That on the 3rd day of March, 1882, in the suit styled Judah Hart *vs.* The City of New Orleans, No. 9662 of the docket of this honorable court, your relator recovered a verdict and judgment at law against the city of New Orleans, a municipal corporation organized under the laws of the State of Louisiana and citizen of said State, for the sum of $121,697.18, with five per cent. per annum interest thereon from the date of said judgment, to wit: March 3rd, 1882, until paid, and costs of suit, which judgment was based on contracts for municipal purposes made from 1871 to 1877, inclusive; that from said judgment the city of New Orleans took a writ of error not operating as a supersedeas; that under and by virtue of a writ of *fieri facias* issued in said cause your petitioner levied upon certain bonus moneys due, and to be due, by the Canal & Claiborne St. Railroad Company, Orleans Railroad Company, and also
2 levied upon all the right, title, and interest of the city of New Orleans in the New Orleans Sugar Shed Company and the New Orleans sugar sheds; that proceedings were taken by the city to contest the said seizures, in which proceedings judgment was rendered in favor of your petitioner, and from which judgment the city of New Orleans took a writ of error operating as a supersedeas.

That while these causes were pending in the Supreme Court of the United States, and before the trial thereof, your petitioner and the said city of New Orleans did, on the 19th day of the month of January, 1885, by an act before Joseph D. Taylor, notary public, and under and virtue of ordinance 1068, counsel series, enter into a contract of compromise, a duly certified copy of which is hereto annexed and made part of this petition, marked Exhibit A. That under and by virtue of said compromise it was stipulated, among other things, that the city should dismiss her writs of error taken as aforesaid, pending in the Supreme Court of the United States; that your petitioner should renounce his seizure of the said sugar sheds; that your petitioner should apply the bonus due and to be due by the said railway companies to the payment of his judgment, and that, after making the deduction aforesaid, your petitioner should fund the balance of his judgment under and by virtue of the provisions of act 67 of the acts of 1884.

Now your petitioner avers that on or about the 23rd day of May, 1885, he received from the Orleans Railroad Company the sum of $2,624.12, and from the Canal and Claiborne Street Railroad Com-

pany the sum of $50,262.17. That on or about the 27th day of June, 1885, your petitioner received from the registry of the court the sum of $8,263.65, being the amount of bonus paid into
3 the said registry by the Canal and Claiborne Street Railroad Company, and also, upon the same day, to wit, the 27th day of June, 1885, by sale of the right of the city of New Orleans to collect the bonus due by the said two railway companies in the future, realized the further sum, as a credit upon said judgment, of $4,520. That your petitioner did further receive from the registry of the court, on the 8 day of July, 1885, the sum of $666.33, being the amount paid into the said registry by the Orleans Railroad Company for the bonus due by it.

That out of this sum your petitioner has paid to the clerk and marshall the sum of $659.70 *dollars* as costs, and that the judgment of your petitioner, which amounts, as aforesaid, to $121,697.18, with five per cent. interest from the 3d day of March, 1882, until paid, and the sum of $183.25 *dollars*, clerks' costs, and $476.45 *dollars*, marshal's costs, are entitled to the credits aforesaid, to wit: the sum of $52,886.29 on the 23d of May, 1885, the sum of $12,783.65 on the 27th day of June, 1885, and the sum of $666.33 upon the 8th day of July, 1885, leaving the amount now due to your petitioner, principal and interest, as follows: Seventy-six thousand one hundred and ninety-four $\frac{62}{100}$ dollars ($76,194.62), with interest at 5 per cent. per annum from July 8th, 1885, until paid.

That your petitioner having complied with all the provisions of the said contract of compromise above set forth is entitled to have and receive from the Board of Liquidation of the City Debt, a corporation organized under and by virtue of the provisions of act 133 of the acts of 1880, and a citizen of this State, the balance due upon his judgment as provided in said act of compromise. Your petitioner avers that under and by virtue of the provisions of act
4 133 of the acts of 1880, and under and by virtue of the provisions of act 67 of the acts of the State of Louisiana of 1884, and under and by virtue of the provisions of the compromise aforesaid it is the ministerial duty of the said Board of Liquidation to cause to be prepared the bonds of the city of New Orleans, signed by the mayor and treasurer of the city of New Orleans, countersigned by the comptroller of the said city, dated June 1st, 1884, and made payable in fifty years from said date or sooner, at the option of the city, bearing interest at the rate of five per cent. per annum from the date of said bonds, payable semi-annually on the 1st of June and December of each year, and the interest thereon to be represented by 100 coupons to be annexed to each bond, the said bonds and the said interest coupons annexed to be issued for such sums as may be deemed most convenient by the Board of Liquidators, payable at such place or places as may be designated in the bond in lawful money of the United States, and that it is their further duty, after causing the said bond to be prepared, to deliver the same to your petitioner to the amount and extent of the unpaid portion of his judgment aforesaid.

Your petitioner avers that, notwithstanding the premises, this peti-

tioner has called upon the said Board and amicably demanded that they should prepare the said bonds as designated in said act, and should deliver the same to your petitioner to the amount and extent of the unpaid portion of his said judgment, which act or acts the said board of liquidation unlawfully and illegally refuse to do, to the irreparable damage and injury of your petitioner.

Your petitioner avers that the city of New Orleans has no objection to the performance of this duty on the part of this Board, but that said Board make this refusal on their own account and for reasons best known to themselves.

5 Wherefore, the premises and the annexed affidavit considered, your petitioner prays that an alternative writ of mandamus may be issued from this honorable court directed to the said Board of Liquidation and each of them, and to its officers and members, directing and commanding them, and each of them, to cause to be prepared, the bonds of the city of New Orleans, as provided in section 1 of the said act 67 of 1884, which bonds shall only be used for the purpose of negotiation and exchange, as provided in said act 67 of 1884, said bonds to be signed by the mayor and treasurer of the city of New Orleans, countersigned by the comptroller of said city, to be dated June 1st, 1884, and made payable fifty years from date or sooner, at the option of the city, bearing interest at the rate of five per cent. per annum from date of said bonds, payable semi-annually on the first days of June and December of each year, and the interest thereon to be represented by 100 coupons to be annexed to each bond; the said bonds and the said interest coupons annexed to be issued for such sums as may be deemed most convenient by the Board of Liquidation, payable at such place or places as may be designated in the bond in lawful money of the United States, and directing and commanding the said Board of Liquidation to deliver to your petitioners the bonds so prepared as aforesaid to the amount, extent, and value of the balance due as above stated upon the judgment of your petitioner.

And further ordering, directing, and commanding the said Board to do and to continue to do all the acts and things required of them under and by virtue of the said act 67 of 1884, and said act 133 of the acts of 1880, which may be necessary, proper, and lawful to be done, in order to provide for the payment, redemption, and cancellation of the said bonds.

6 And your petitioner prays that the said Board of Liquidation of the City of New Orleans may be cited to answer this demand, and that upon due hearing your honors may make the said alternative writ of mandamus peremptory, with costs.

(Signed) E. H. FARRAR,
A. G. BRICE, *Att'ys.*

Personally came and appeared before me, the undersigned authority, Edgar H. Farrar, who, being duly sworn, deposes and says that he is one of the attorneys of Judah Hart, the relator in the above petition, who is now absent from the State, and that all the

facts and allegations contained therein are true and correct to the best of his knowledge and belief.

(Signed) EDGAR H. FARRAR.

Sworn to and subscribed before me, this 3d day of July, 1885.

(Signed) JOS. MAILLE,
Not. Pub.

Order.

Considering the petition and affidavit, let an alternative writ of mandamus as therein prayed for issue, returnable on the — day of ——, 1885.

Consent.

The undersigned relator and defendant's intervenor hereby waive trial by jury and submit this cause to the court for adjudication.

(Signed) E. H. FARRAR,
Att'y Relator.

7

H. C. MILLER,
For Board of Liq.

LEOVY & LEOVY, AND
J. P. BLAIR, E. D. WHITE,
Attys for Intervenor.

Service of this petition is accepted; citation and issuance of alternative writ of mandamus is waived.

(Signed) H. C. MILLER,
Atty for Board of Liq.

It is agreed that the Sun Mutual Insurance Company shall join in this cause to aid the Board of Liquidation in asserting the unconstitutionality of act 67 of 1884.

It is further admitted and agreed that the averments of said petition as to the ownership of bonds issued under act 67 of 1882 are true.

(Signed) E. H. FARRAR,
Att'y Judah Hart.

8 *Answer. Filed July* 30, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT *et als.* } No. 11090.

Now comes the Board of Liquidation, charged with the bonded debt of New Orleans and its liquidation, under the acts of the Legislature of Louisiana, No. 133 of 1880, No. 580 of 1882, No. 58 of 1882, which acts are specially referred to for further explanation and greater certainty, and for answer to the petition of the relator answers and says:

That the defendant believes to be true that the relator recovered

judgment and issued his *fi fa* thereon; that thereon there was a contest, judgment, and writ of error taken by the city of New Orleans, as stated in relator's petition. The defendant also believes and admits that there were proceedings had for a compromise of relator's judgment, as stated in the petition, but as to the amounts derived and credits in said judgment relator has no knowledge.

This respondent further shows that the act No. 58 of 1882 of the Legislature of Louisiana, entitled An act to authorize the city to renew and extend payment of her bonds outstanding, etc.——

There was dedicated and pledged to the bondholders who accepted that act all property of the city of New Orleans not dedicated to public use, expressed in the 1st section of the act, and in
9 previous legislation; that is, in the 5th section of act No. 133 of 1880, and there was also pledged and dedicated to the said bondholders for payment of their bonds the surplus of the premium bond tax levied under the act No. 31 of 1876 to adjust, regulate, and provide for the bonded debt of the city, etc., and said pledge and dedication appears in the 7th section of said act of 1882.

This respondent further shows that said act was accepted, and bonds to the amount of five millions of dollars were exchanged and funded into the bonds authorized to be exchanged and issued under said act of 1882, and are now outstanding and unpaid; that the property and taxes thus pledged constitute part of, and an essential part of, the provisions made by law for the payment of said bonds and of the interest thereon; that the taxes levied to pay the interest on the bonds is specified in the 5th section of the act, and the pledged assets and taxes specified in the 6th and 7th sections constitute the provisions for the interest of the bonds in a sinking fund, and is used *as* to provide for the interest thereon.

And respondent shows that all said taxes, surplus of premium bond tax, and assets so pledged by the act of 1882 are necessary to pay and provide for the principal and interest upon said bonds; that each and all these provisions constituted the contract between the city of New Orleans, and the act itself declares in express terms in the 10th section, which respondent is enjoined by the act to carry out and enforce.

And this defendant further shows that prior to the said act of 1882 the act No. 31 of 1876 had dedicated the entire premium bond tax to the bond issued under that act; that bonds to the extent of twelve millions of dollars were issued and exchanged for that amount of the then outstanding bonds of the city, the hold-
10 ers thus exchanging their bonds, relying on the provisions in said act of 1876, constituting the contract between the city and the bondholders, and declared a contract by the express terms of that act.

This defendant shows that the fifteen millions of bonds issued under the said acts of 1876 & 1858 are now outstanding and unpaid, dependent upon the provisions aforesaid made for their payment, and upon the faithful application and enforcement of said provisions by this Board, the defendant herein, and that by and through said provisions and their enforcement the credit of the city on its bonded

debt has been maintained and the interest on said bonded debt paid.

And thus defendant shows that said act of 1884, under which the relator claims the bonds for which he sues, provides that the Board of Liquidation shall thereafter apply all assets not diverted to public use and all drawn premium bonds to the payment of the floating debt of the city merged into judgments, except floating debt claims prior to 1879, for which floating debt, in form of judgments prior to 1879, this relator is required to issue bonds, the bonds and interest thereon to be paid from and out of the said property, real and personal, of the city not dedicated to public use, and by and with drawn premium bonds in the possession of the city, all of which is now fully shown by the said act No. 67 of 1884, and specially by the 3d and 4th sections thereof.

Defendant shows that these sections propose a distinct clearance from the bonded debt of the taxes, assets, and property pledged and donated to the bonded debt by the said acts of 1882 and 1876; that at said drawing of these premium bonds for payment out of the premium bond tax a large number of such bonds are held by the city, are unissued, and not extant in the hands of holders; that
11 the city holds a large amount of said drawn premium bonds already drawn; that hence drawn premium bonds in possession of the city, as used in the act of 1884, and directed to be applied to the bonds of 1884, is the surplus of the premium bond tax, and the direction of the act of 1884 is that this surplus shall be applied to these floating debt bonds, a distinct violation of the 7th section of the act of 1884, which pledges that surplus to the bonded debt, and that 3d section of the act of 1884, which deals with property and assets, proposes to take from the bonded debt the property and assets pledged to the bonded debt by said act of 1882.

And this defendant shows that these provisions of the act of 1884 violate the contract with the bondholders, as formed by the acts of 1858 and 1876, propose to impair if not destroy that contract, and are null and void, because they violate the 10th section of article 1st of the constitution, prohibiting legislation impairing the obligation of contracts.

That this respondent, charged with the execution of these acts of 1858 and 1876, have for the reasons set forth, declined and refused to issue the bonds unless ordered to do so by the court, prohibited as the Board is under heavy penalty from diverting from the bonded debt the taxes and assets pledged for its payment.

Wherefore defendant prays for judgment in its favor with costs.

("Signed") H'Y C. MILLER,
Att'y for Board of Liq.

12 *Intervention of the Sun Mutal Insurance Co. Filed July 30th*, 1885.

United States Circuit Court, Eastern District of Louisiana.

STATE OF LOUISIANA *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION. } No. 11090.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

The petition of the Sun Mutual Insurance Company, a corporation duly created and organized under the laws of the State of Louisiana and having its domicile in the city of New Orleans in said State, respectfully represents—

That it desires to make itself a party to this litigation to oppose the demand of the plaintiff herein, and that it has an interest in the controversy now pending in this cause exceeding the sum of ten thousand dollars in value.

That it is the holder and owner of a number of bonds of the city of New Orleans, to the amount of more than $100,000, which were either extended by intervenor or acquired by it as extended, in accordance with and in reliance upon the provisions of act No. 58 of the acts of the General Assembly of the State of Louisiana, for the year 1882. That the value and validity of these said extended bonds will be depreciated more than 25 per cent. if the demand of the plaintiff herein is granted, and the validity of said act No. 67 of 1884 be established, and the Board of Liquidation directed

13 to execute the provisions of said act.

That it also owns and controls a number of bonds of the city of New Orleans known as "premium bonds" to the amount of more than $30,000, which were acquired on the faith of the provisions of act No. 31 of the acts of the General Assembly of this State for the year 1876; that if the Board of Liquidation is ordered to carry out the provisions of said act No. 67 of 1884 the contract rights of intervenor under said act of No. 31 of 1876 will be impaired, the value of said premium bonds depreciated, and a loss on this account of more than ($5,000) five thousand dollars will be suffered by intervenor.

Petitioner and intervenor further represents that said act No. 58 of 1882 makes certain provisions for the payment of the principal and interest of the bonds extended to be retired under its provisions, and said acts pledges and dedicate certain funds and revenues of the city of New Orleans for this purpose, and directs the said Board of Liquidation to employ said pledged funds and revenues exclusively for the payment of the interest and principal of extended bonds of the character owned by intervenor. That said act No. 58 of 1882 is, from its nature and from the express enactment of sec. 10 of said act, a contract between the State of Louisiana, the city of New Orleans, and your petitioner and intervenor, who accepted its terms and extended its bonds in reliance thereon.

Petitioner and intervenor avers that said act No. 67 of 1884 impairs the obligation of this contract contained in said act No. 58 of

1882, and seeks to divert the funds and revenues pledged by the said act of 1882 from the purposes to which they had, by said act,
14 been inviolably dedicated, and directs the said Board of Liquidation to apply these same funds and resources exclusively to the payments of the principal and interest of the bonds, the issuance of which is provided for in said act No. 67 of 1884.

That said act No. 67 of 1884 is violative of section 10, article 1, of the Constitution of the United States, and is unconstitutional, null, and void.

Wherefore this intervenor prays that this honorable court grant it leave to intervene herein and join the defendant, and further prays that said act No. 67 of 1884 be declared unconstitutional, and that the demand of relator herein be rejected with costs; or, in event that relator be declared to have any rights enforceable under and by virtue of said act No. 67 of 1884, intervenor prays that its contract rights under acts No. 31 of 1876 and No. 58 of 1882 be protected, and that judgment be rendered herein denying the right of plaintiff to an order directing the said Board of Liquidation, defendant, to alter the destination of the debt and interest tax and other funds and revenues pledged by said act No. 58 of 1882, and to employ them for other purposes than those to which by said act of 1882 they were directed to be applied.

Further prays for costs and general relief, &c.

("Signed") LEOVY & LEOVY,
J. P. BLAIR,
WHITE & SAUNDERS,
Att'ys for Intervenors.

Order.

Let this petition of intervention be filed.

("Signed") ALECK BOARMAN, *Judge.*

15 Service of this intervention and citation thereon is waived, and consent is given that the said Sun Mutual Insurance Company shall join in this cause to aid the Board of Liquidation in asserting the unconstitutionality of act 67 of 1884.

It is further admitted and agreed that the averments of said petition as to the ownership of bonds issued under act 58 of 1882 and of "premium bonds" are true.

(Signed) E. H. FARRAR,
Att'y for Relator.
E. B. KRUTTSCHNITT,
H'Y C. MILLER,
Att'ys for Board of Liq.

Answer to the Intervention of the Sun Mutual Ins. Co. Filed July 30th, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT *et als.* } No. 11090.

Now comes Judah Hart, and for answer to the intervention of

the Sun Mutual Insurance Co. avers and says: That the act No. 67 of 1884 is valid and constitutional.

Wherefore he prays that said intervention may be rejected with costs.

(Signed) E. H. FARRAR,
A. G. BRICE,
Atty's Judah Hart.

16 *Answer to Intervention. Filed July 30th*, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT *et als.* } No. 11090.

Now comes the Board of Liquidation, and for answer to the petition of intervention it answers and says: That it has set forth in its answer its reasons for not issuing the bonds the relator demands, and to that answer it refers and makes it part hereof.

(Signed) H'Y C. MILLER,
Att'y for Board of Liq.

17 *Defendant's & Intervenor's Bill of Exception No. 1. Filed July 30, 1885.*

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION. } No. 11090.

Bill of Exception No. 1.

Be it remembered that on the trial of this case the defendant intervenor herein requested the judge, who had found the facts to be as stated in the admission filed herein, to hold, as a matter of law, that the relator was not entitled to a mandamus directing the issuance of the bonds as prayed for, which finding the judge refused to make, on the ground that the act of 1884, relied upon by the relator, was a valid and constitutional act, and did not impair the obligation of intervenor's contract, despite the statement of facts disclosed by the admission and statement of facts found by the judge. To which ruling the intervenor and the defendant excepted, and tendered this their bill of exception in open court, after due reading of the same and submission to opposite counsel, which was signed by the judge in order to test the verity of its contents.

(Signed) ALECK BOARMAN, *Judge.*

18 *Defendant's & Intervenor's Bill of Exception No. 2. Filed July 30, 1885.*

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* Judah Hart
vs.
BOARD OF LIQUIDATION. } No. 11090.

Bill of Exception No. 2.

Be it remembered that on the trial of this case the judge, having found the state of facts disclosed in the admission made by all the parties to be as stated, was requested by the defendant and the intervenor to conclude, as a matter of law, from said admitted state of facts, that the relator was not entitled to a decree directing the issuance of the mandamus authorizing the board to apply the city debt fund to the payment of said bonds, as prayed for by the relator, even if same were ordered to be issued, because, under the state of facts found, the entire city debt fund was pledged to the payment of the bonded debt, and therefore the diversion thereof to the relator for bonds claimed by him would impair the obligation of the contract of intervenor; which finding of law the judge refused to make, on the ground that the intervenor was not entitled, under his contract, to the said city debt fund, but that the same, under the act of 1884, was applicable to the bonds claimed by the relator; to which ruling the intervenor and the defendant excepted, and tendered this their bill of exception in open court in the presence of opposite counsel, which was signed by the judge in order to test the verity of its contents.

(Signed) ALECK BOARMAN, *Judge.*

19 *Defendant's & Intervenor's Bill of Exceptions No. 3. Filed July 30, 1885.*

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel* Judah Hart
vs.
BOARD OF LIQUIDATION. } No. 11090.

Bill of Exceptirn No. 3.

Be it remembered that on the trial of this case the judge having found the facts to be as admitted by the parties and stated in the admission of facts found in the record, the defendant & intervenor requested the judge to find, as a matter of law, that the surplus of the drawn premium bonds was dedicated entirely to the bonus of the intervenor, and, therefore, that the provision of the act of 1884 was unconstitutional, null, and void, because it impaired the obligation of intervenor's contract, which ruling of law, under the agreed state of facts, the court refused to make, on the ground that the intervenor was not exclusively entitled to the surplus of the premium bond tax, but that same, under act of 1884, was applicable and could

be applied to the bonds provided for in said act. To which ruling the intervenor and the defendant excepted, and tenderd this their bill of exception in open court, in the presence of the opposite counsel, which was signed by the judge in order to attest the verity of its contents.

(Signed) ALECK BOARMAN, *Judge.*

20 *Intervenor's Bill of Exception No.* 4. *Filed July* 30, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel* Judah Hart
vs.
BOARD OF LIQUIDATION. } No. 11090.

Bill of Exception No. 4.

Be it remembered that on the trial of this case, the court having found the facts to be as stated in the admission of facts found in the record, the intervenor requested the court to find, as a matter of law, that the drawn premium bonds held by the city and not already issued in exchange for outstanding bonds, constitute a part and parcel of the surplus of the premium bond tax, and that the said surplus so constituted was exclusively dedicated to the bonded debt of said city, exclusive of the bonds claimed by the relator, which ruling the judge refused to make, on the ground that said drawn premium bonds, although a part of the surplus, were not exclusively dedicated to the bonds of intervenors, but were also, under the act of 1884, applicable to the bonds provided in said act and claimed by the relator herein. To which ruling counsel of intervenor excepted and tendered this his bill of exception in open court, after submission to opposite counsel, which was signed by the judge in order to attest the verity of its contents.

(Signed) ALECK BOARMAN, *Judge.*

21 *Findings of Fact & Judgment. Filed July* 30*th*, 1885.

United States Circuit Court, Eastern District of Louisiana.

STATE *ex. rel.* Judah Hart
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. —.

In this cause, this day submitted to the court on the petition, answer, petition of intervention of the Sun Mutual Insurance Company and answers thereto, and upon the written admissions and affidavits in the record, a jury having been waived in writing, as per waiver of record herein, the court finds the facts as follows:

1st. That on the third day of March, 1882, in the suit styled Judah Hart *vs.* The City of New Orleans, No. 9662 of the docket of this honorable court, relator recovered a verdict and judgment at law against the City of New Orleans, a municipal corporation, organized under the laws of the State of Louisiana and a citizen of said State, for the sum of $121,697.18, with five per cent. per annum interest

thereon from the date of said judgment, to wit, March 3rd, 1882, until paid, and costs of suit, which said judgment was based on contracts for municipal purposes, made from 1871 to 1877, inclusive, and that from said judgment the city of New Orleans took a writ of error not operating as a supeasedeas; that under *fi. fa.* issued in said cause relator levied upon certain moneys due and to be due
22 by the Canal and Claiborne Street Railroad Company and by the Orleans Railroad Company to the city of New Orleans, and also levied upon all right, title, and interest of the city of New Orteans in the New Orleans Sugar Shed Company, and in the New Orleans Sugar Sheds.

2nd. That proceedings were taken by the said city to contest said seizures, in which proceedings judgment was rendered in favor of relator, and from which judgment the city of New Orleans took a writ of error operating as a supersedeas.

3rd. That while these causes were pending in the Supreme Court of the United States, and before the trial thereof, relator and the said city did, on the 19th day of January, 1885, enter into a compromise under and by virtue whereof it was stipulated, among other things, that the said city should dismiss her writs of error taken as aforesaid; that relator should renounce his seizure of said sugar sheds; that relator should apply the bonus due and to become due by said railroad companies to the payment of the judgment, and that after making the deductions aforesaid relator should fund the balance of his judgment under and by virtue of the provisions of act 67 of the acts of the Legislature of the State of Louisiana of the year 1884.

4th. That under the writ of *fi. fa.* aforesaid, and under and by virtue of other proceedings taken in execution of said judgment aforesaid, certain sums of money have been realized whereby the amount due to relator under his said judgment has become reduced to $76,194.62, with interest at five per cent. per annum from
23 the 8th day of ——, 1885, until paid, subject to be increased by a claim of the marshal for commissions, now pending on rule in this case.

5th. That relator has called upon the Board of Liquidation of the City Debt, a corporation organized under and — virtue of the provisions of act 133 of the acts of the Legislature of the State of Louisiana of the year 1880, and has amicably demanded that the said Board should prepare bonds, as designated in said act 67 of the acts of the Legislature of the State of Louisiana of the year 1884, and should deliver the same to relator to the amount and extent of the unpaid portion of his judgment as aforesaid, but that said Board of Liquidation has refused to prepare said bonds, or to deliver the same to relator, or in any manner to comply with relator's said demand.

6th. That the city of New Orleans makes no objection to the preparation and issue of said bonds by said board, or to its compliance with relator's request.

7th. That there are outstanding premium bonds	$7,918,280 00
Premium bonds unissued and held by city	6,736,700 00

Premium bonds bought in and by the city and with funds arising from the sale of railroad franchises and held by her	3,567,360 00
Total	$18,222,340 00
8th. That the premium bond tax levied during the year 1883 was	$565,455 51
That the tax collected to date for said year was	466,938 55
That the amount required, carrying out the premium bond plan for 1883, if the said plan were carried out in its integrity, was	682,720 00

That the premium bonds, interest, and premiums paid during the year 1883 were as follows:

Paid bonds, interest, and premiums outstanding	$319,366 00
Am't of drawn bonds bought and held by the city	139,224 00
Am't of unissued bonds represented by the city	224,160 00
Total	$682,750 00
9th. Premium bond tax levied for 1884	$573,144 07
Collected to date	429,155 47
Amount required per premium bond plan for 1884	703,750 00

Premium bonds paid during 1884:

Paid bonds outstanding	346,836 00
Represented by drawn bonds bought by the city or held by her	121,924 00
Drawn bonds unissued and represented by the city	234,990 00
10th. That the entire amount of back taxes prior to 1879, to wit, for the years 1876, 1877, and 1878, received to date by the Board of Liquidation, amounts to	48,841 63

And that no other revenue from back taxes prior to 1879 has to date come into the hands of the said Board.

11th. That the coupon tax, other than premium bonds collected to date for the year 1883, amounted to	$335,035 01
That the coupons payable and paid in the year 1883 were	496,029 70
Difference	$160,994 69

That this difference was paid by money remaining in the debt fund principally, consequent on drawn premium bonds represented or held by the city.

That the coupon tax collected to date for the year 1884 was	$429,155 38
Coupons payable in the year 1884	496,029 70
Difference	$66,874 32

Which difference was made up by the money due to drawn premium bonds represented or held by the city.

12th. That the sum required to carry out in its integrity the premium bond plan, considering all the bonds as issued and in the hands of other persons than the city of New Orleans, has never, except for the years 1876 and 1877, been produced by the premium bond tax.

The premium bond plan required for the year 1883	$682,754 00
The total 5 mill premium bond tax levied in 1883	565,455 00
Difference	$117,299 00
Premium bond plan required for 1884	$703,750 00
Five mill tax levied in 1884	573,144 00
Difference	$130,606 00

26 The deficit in 1883 and 1884 did not become apparent, because of the fact that the funds corresponding to the drawn premium bonds held by the city remained in the hands of the city and had not to be paid out.

13th. Total yearly interest on bonds other than premium bonds

	$496,029 00
Extended under act 58 of 1882	168,294 00
Total yearly interest on certificate ten-year bonds	115,680 00
Total	$780,003 00

14th. That the amount furnished by the premium bond tax was never adequate, except for the years 1876 and 1877, to carry out the premium bond plan if all the premium bonds had been issued; hence the surplus of the premium bond plan represents no surplus tax over and above the amount required to carry out the plan in its integrity and thus pay the outstanding premium bonds and the sum or sums which accrue to the city as the holder or representative of drawn premium bonds, either not issued or bought in by her. If the premium bonds covered by the plan and now represented by the city were issued to outsiders there would be an annual deficit in the premium bond plan itself, as shown by the following figures:

Premium bond plan required for 1883	$682,750 00
Five mill tax levied for 1883	565,445 00
Difference	$117,305 00
Premium bond plan required for 1884	$703,750 00
Five mill tax levied for 1884	573,144 00
27 Difference	$130,606 00

15th. That the coupon tax for the various bonds and extended

bonds, as collected to date, has been inadequate to pay the interest on such bonds, the deficiency being made up by the money in the hands of the city as the holder of drawn premium bonds unissued or held by her.

16th. That no bonds have been issued under the provisions of act 133 of the session of 1880.

17th. That under the act No. 58 of 1882 the Board of Liquidation has issued bonds to the amount of $4,609,217.50, now extant and unpaid, and for which holders of bonds and coupons, outstanding at date of the act of 1882, have surrendered and given up that amount of such outstanding bonds and coupons.

18th. That the assessed value of property in the city of New Orleans is as follows:

For the year 1883 about	----------	$113,000,000 00
1884 "	----------	114,000,000 00
1885 "	----------	124,000,000 00

That about ten per cent. of the uncollected premium-bond tax from 1876 to 1879 and about forty per cent. of the same uncollected tax from 1880 to 1884 are collectible in course of time.

And upon the said facts the court finds the law to be:

1st. That relator is entitled to a writ of mandamus as by him prayed for, directed to the Board of Liquidation of the City Debt, a body corporate under the laws of the State of Louisiana, and to its officers and members, directing and commanding them,
28 and each of them, to cause to be prepared bonds by the city of New Orleans, as provided by section 1 of the act 67 of 1884, which bonds shall only be used for the purpose of negotiation and exchange, as provided in said act, and which bonds shall be signed by the mayor and treasurer of the city of New Orleans, countersigned by the comptroller of the said city, dated June 1st, 1884, and made payable in fifty years from said date or sooner, at the option of the city, bearing interest at the rate of five per cent. per annum from the date of said bonds, payable semi-annually, on the first of June and December of each year, and the interest thereon to be represented by one hundred coupons to be annexed to each bond; the said bonds and the said interest coupons to be issued for such sums as may be deemed most convenient by the Board of Liquidation, payable at such place or places as may be designated in the bond in lawful money of the United States, and directing and commanding said Board to deliver to relator the bonds so prepared as aforesaid, to the amount, extent, and value of the balance due, as above stated, upon the judgment of the relator. And further ordering, directing, and commanding said Board to do and continue to do all the acts and things required by them under and by virtue of said act 67 of 1884 and said act 133 of the acts of 1880, which may be necessary and proper to be done in order to provide for the payment, redemption, and cancellation of said bonds, and especially to apply all the avails of the city debt fund, as well as all uncollected revenues of said city anterior to the year 1879, when collected—

1st. To the payment of the interest on the bonds authorized
29 herein, in the event that the tax authorized by section 11 of act 133, approved April 10th, 1880, be not levied.

2nd. To the redemption and cancellation of the said bonds, provided the bids for the same shall be by sealed proposals, and that preference shall be given to the lowest bidder, and provided, further, that no bids above the par value of said bonds shall be accepted.

3rd. That, for the further redemption of said bonds, said Board is required and commanded, after each and every allotment of series of premium bonds, to advertise for sealed proposals for the exchange of drawn premium bonds in the possession of the city for the bonds authorized by this decree to the amount of fifty thousand dollars of said bonds issued under act 67 of 1884, provided that no exchange be made unless preference be given to the lowest bidder.

And the court considering the law and the evidence as above found, and for reasons orally assigned, and especially for the reasons set forth in the opinion of the Honorable E. C. Billings, a judge of this court, in his written opinion on file in the suit, entitled the Sun Mutual Insurance Company *vs.* The Board of Liquidation of the City of New Orleans, No. 10935 of the docket of this court, and which said opinion is referred to as a part of this opinion and decree.

It is now ordered, adjudged, and decreed that a writ of peremptory mandamus issue herein to the Board of Liquidation of the City Debt, a body corporate under the laws of the State of Louisiana, and to each member of said Board, and to its officers, directing and commanding them, and each of them, to cause to be prepared bonds by the city of New Orleans, as provided in
30 *in* section 1 of act 67 of 1884, which bonds shall only be used for the purposes of negotiation and exchange, as provided in said act, and which bonds shall be signed by the mayor and treasurer of the city of New Orleans, countersigned by the comptroller of said city, dated June 1st, 1884, and made payable in fifty years from said date or sooner, at the option of the city, bearing interest at the rate of five per cent. per annum from the date of said bonds, payable semi-annually on the 1st of June and December of each year, and the interest thereon to be represented by one hundred coupons, to be annexed to each bond; the said bonds and the said interest coupons to be issued for such sums as may be deemed most convenient by the Board of Liquidation, payable at such place or places as may be designated in the bond in lawful money of the United States, and directing and commanding said board to deliver to relator the bonds so prepared as aforesaid to the amount, extent, and value of the balance, due as before stated, upon the judgment of relator, and further ordering, directing, and commanding said board to do, and continue to do, all the acts and things required by them, under and by virtue of said act 67 of 1884 and said act 133 of the acts of 1880, which may be necessary and proper to be done in order to provide for the payment, redemption, and cancellation of said bonds, and especially to apply all the avails of the city debt

fund, as well as all uncollected revenues of said city anterior to the year 1879, when collected—

1st. To the payment of the interest on the bonds authorized herein in the event that the tax authorized by section 11 of act 133, approved April 10th, 1880, be not levied.

31 2nd. To the redemption and cancellation of the said bonds, provided the bids for the same shall be by sealed proposals, and that preference shall be given to the lowest bidder, and provided further, that no bids above par value of said bonds shall be accepted.

3rd. That for the further redemption of said bonds said board is required and commanded, after each and every allotment of series of premium bonds, to advertise for sealed proposals for the exchange of drawn premium bonds in the possession of the city for the bonds authorized by this decree to the amount of fifty thousand dollars of said bonds issued under act 67 of 1884, provided that no exchange be made unless preference be given to the lowest bidder.

It is further ordered, adjudged, and decreed that the intervention of the Sun Mutual Insurance Company be, and the same is hereby, dismissed at the costs of said intervenor.

It is further ordered that the relator recover of defendant all other costs herein.

Judgment rendered July 30th, 1885.

Judgment signed July 30th, 1885.

(Signed) ALECK BOARMAN, *Judge.*

All delays and formalities as to the signature of this judgment are waived, and it is agreed that it be signed now, this 30th day of July, 1885, in vacation as in term time.

(Signed) E. H. FARRAR,
Att'y Judah Hart.

H. J. LEOVY, J. P. BLAIR, & E. D. WHITE,
Atty- for Intervenor.
H. C. MILLER,
For Board of Liquidation.

32 *Defendant's Application for Writ of Error. Filed July* 30, 1885.

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

To the honorable justices of the Supreme Court of the United States:

And now comes the Board of Liquidation of the City Debt of the Parish of Orleans, by H. C. Miller, its attorney, and complains that in the record and proceedings, and also in the rendition of judgment in a suit between the United States *ex rel.* Judah Hart, plaintiff, and the said Board of Liquidation of the City Debt, defendant, tried in the circuit court of the United States for the eastern district, at —— term thereof, A. D. eighteen hundred and ——, and in which judgment was rendered against it on the — day of ——, A. D. eighteen

hundred and ——, manifest error hath intervened, to the great damage of the said Board of Liquidation of the City Debt:

Wherefore it prays for the allowance of a writ of error to operate as a supersedeas, and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

Allowed to operate as a supersedeas on defendant's furnishing bond, according to law, in the sum of one thousand dollars.

July 30, 1885.

("Signed") ALECK BOARMAN, *Judge.*

We consent that the writ of error, to operate as a supersedeas, be allowed on a bond for one thousand dollars.

("Signed") E. H. FARRAR,
Att'y Judah Hart.
H'Y C. MILLER,
Att'y for Board Liq.

33 *Bond for Writ of Error. Filed August* 8, 1885.

United States Circuit Court, Eastern District of Louisiana.

UNITED STATES *ex rel.* JUDAH HART
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 11090.

Know all men by these presents that we, the Board of Liquidation of the City Debt of New Orleans, as principal, and Horace Carpenter, as surety, are held and firmly bound unto Judah Hart in the full and just sum of one thousand dollars, to be paid to the said Judah Hart, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this fourth day of August, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein the said Judah Hart was plaintiff, and the said Board of Liquidation of the City Debt of New Orleans was defendant, judgment was rendered against the said Board of Liquidation of the City Debt of New Orleans, defendant, and the said Board of Liquidation of the City Debt of New Orleans hav-

34 ing obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Judah Hart, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Board of Liquidation of the City Debt of New Orleans shall prosecute its writ to effect, and answer all damages and cost if it fail to

make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) THE BOARD OF LIQUIDATION,
Per H'Y C. MILLER.
H. CARPENTER.

UNITED STATES OF AMERICA, *District of Louisiana,* } *ss:*

Personally appeared Horace Carpenter, who, being duly sworn, deposes and says that he is the surety on the within bond, and that he resides No. 467 Camp street, between Race and Orange streets, New Orleans, La., and is worth the full sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) H. CARPENTER.

Subscribed and sworn before me this 4th day of August, 1885.

(Signed) SAM'L FLOWER,
Notary Public and ex-officio U. S. Commissioner.

35 Citation on within—referred—to writ of error waived and bond approved.

(Signed) E. B. KRUTTSCHNITT,
Att'y for Judah Hart.

36 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 35 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of United States *ex rel.* Judah Hart *vs.* Board of Liquidation, Sun Mutual Ins. Co., intervenor, No. 11090 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5 day of October, A. D. 1885.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5 day of October, A. D. 1885.

DON A. PARDEE, *Judge.*